



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

May 13, 2015

Robert W. Jones, III
Managing Principal
New England Transrail, LLC
46 Grand Cove, Edgewater, NJ 07020-7245

Re: Comfort/Status and Reasonable Steps Letter
51 Eames Street, Wilmington, Massachusetts
Olin Chemical Superfund Site

Dear Mr. Jones:

I am writing in response to your December 18, 2014 request for a Prospective Purchaser Agreement ("PPA") or Comfort/Status Letter ("CSL") regarding the property at 51 Eames Street Wilmington, Massachusetts (the "Property"). My response is based upon the facts presently known to the United States Environmental Protection Agency ("EPA").

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), commonly referred to as Superfund, EPA's primary mission is to protect human health and the environment from the exposure risks posed by contaminated or potentially contaminated lands. However, in doing so, EPA also recognizes the social and economic benefits of returning contaminated lands to productive use.

As you know, the Property is located within the current study area designated by EPA as the Olin Chemical Superfund Site (the "Site"), and subject to the requirements of an Administrative Settlement Agreement and Order on Consent ("AOC"), EPA Region 1 CERCLA Docket No. 01-2007-0102, with an effective date of July 3, 2007. The AOC requires that American Biltrite, Inc., Olin Corporation ("Olin"), and Stepan Company (collectively, the "Respondents") complete a Remedial Investigation and Feasibility Study ("RI/FS") at the Site consistent with CERCLA.

The AOC also requires that the Respondents shall provide continued access to property owned by Respondents at the Site at all reasonable times, and that Olin, as sole current owner of the Property, provide a Transfer Notice and execute a Transfer Agreement in the event that any change in the ownership interest in the Property is imminent. The Transfer Notice is to be provided to EPA at least 30 days prior to any transfer. The Transfer Agreement is to be executed between Olin and the intended transferee or option holder, which for the purposes of this CSL is New England Transrail, LLC ("NET") (see AOC, Paragraph XII).

EPA understands that NET plans to develop and use the Property as a commodities-based rail transloading terminal facility as shown in Attachment 1. EPA does not support or oppose NET's proposed development, and EPA is not opining as to whether NET's proposed development complies with local or state zoning or land use regulations.

History and Status of the Site

The Olin Chemical Superfund Site includes the 53-acre Property located at 51 Eames Street in Wilmington, Massachusetts. The Property was largely forested prior to the 1950s. From 1953 until 1986, numerous entities conducted chemical manufacturing operations at a facility located on the Property. Olin purchased the Property in 1980. Liquid wastes generated at the facility, which included sulfuric acid, sodium chloride, sodium sulfate, ammonium chloride, ammonium sulfate, chromium sulfate and other compounds, were disposed of in unlined pits (commonly referred to as lagoons) on the northern half of the Property, and wastes percolated into the soil or overflowed into natural and man-made drainage ways.

The liquid wastes disposed of at the Site had high concentrations of dissolved inorganic constituents with fluid densities greater than water. These dense liquids migrated vertically to the bedrock surface, forming a brine layer in bedrock depressions within the aquifer commonly referred to in Site study documents as dense aqueous phase liquid ("DAPL") pools. The DAPL pools contain elevated concentrations of several contaminants of interest, most notably n-nitrosodimethylamine ("NDMA"). NDMA is believed to have formed within the aquifer due to the presence of the liquid wastes disposed at the Site.

Numerous environmental investigations and response activities were conducted at the facility prior to inclusion of the Site in EPA's CERCLA program. These investigations and subsequent response actions resulted in the excavation and off-Site disposal of contaminated soil from two drum disposal areas, a buried debris area, and Lake Poly (a former lagoon); as well as impacted sediment from the West Ditch and associated wetland, the South Ditch, and Central Pond. All response actions were conducted in accordance with work plans approved by the Massachusetts Department of Environmental Protection ("MassDEP"). An area of trimethylpentenes in soil and shallow groundwater located near the Plant B groundwater recovery/treatment system were identified and remediated using an air sparge/soil vapor extraction system ("AS/SVE").

Since 1989 the Respondents have operated the Plant B groundwater recovery/treatment system. The system was installed in response to seepage of a light non-aqueous phase liquid ("LNAPL") into the East Ditch. The LNAPL is process oil that contains chemicals of interest including bis(2-ethylhexyl)phthalate, n-nitrosodi-n-propylamine, and trimethylpentenes. The system was designed to create a groundwater cone of depression to prevent migration and allow for mechanical removal of the LNAPL. Groundwater extracted during operation of the Plant B system is treated to remove iron and ammonia as well as dissolved organic compounds. The treated groundwater is discharged to surface water in the on-Property upper West Ditch under an EPA-issued Remediation General Permit.

In 2000 Olin constructed a slurry wall/cap containment structure around the on-Property portion of the upper DAPL pool. The intent of this source control action was to eliminate, to the extent

feasible, the on-Property DAPL material as a source of dissolved constituents to groundwater. A significant volume of DAPL remains outside the containment structure. The containment structure is comprised of a 3-foot thick perimeter slurry wall extended to the top of bedrock (about 40 feet below ground surface) and covered with a temporary 5-acre geo-synthetic cap to minimize infiltration of precipitation into the containment area.

The Site was finalized for inclusion on the National Priorities List ("NPL") on April 18, 2006. The NPL is EPA's list of CERCLA-eligible Sites. In June 2007, EPA and the Respondents entered into the AOC which required that the Respondents complete an RI/FS consistent with CERCLA. Due to the extent of previous investigations and recognition of the technically complex nature of cross-media impacts, the RI/FS was divided into three operable units ("OUs") as follows:

- Operable Unit 1 ("OU1"): Defined as the 53-acre Property, including the former facility area, established conservation area, on-Property ditch system, calcium sulfate landfill, and slurry wall/capped area. OU1 was intended to address source control concerns and includes soil, sediment, surface water, and potential vapor issues.
- Operable Unit 2 ("OU2"): Defined as off-Property surface water and sediment areas including, at a minimum, the off-Property East Ditch, South Ditch and Landfill Ditch; Sawmill Brook and Maple Meadow Brook; and North Pond. OU2 was intended to address source control and management of migration concerns, and includes surface water and sediment issues.
- Operable Unit 3 ("OU3"): Defined as all on- and off-Property groundwater areas including the Maple Meadow Brook aquifer, groundwater beneath the Property, and groundwater contamination located south and east of the Property. OU3 was intended to address management of migration concerns and includes groundwater and potential vapor issues.

Field work for OU1 and OU2 was completed from 2009 to 2012. Results were combined into a single Draft Remedial Investigation Report submitted to EPA in April 2013. Following review and comment by EPA, MassDEP, the Town of Wilmington and the Wilmington Environmental Restoration Committee ("WERC"), a Draft Final Remedial Investigation Report was submitted to EPA in April 2014 and is expected to be finalized soon. Field work for OU3 began in 2010 and is expected to be complete in 2015.

On April 14, 2015, EPA issued a letter documenting the decision to combine the operable units into a single proposed plan and Record of Decision.

CERCLA's Bona Fide Prospective Purchaser Liability Protection

In January 2002, Congress amended CERCLA to include liability limitations for landowners that acquire contaminated property after the effective date of the amendments (January 11, 2002) if those landowners qualify as "bona fide prospective purchasers" ("BFPP"). To meet the statutory criteria for a BFPP, a landowner must satisfy certain threshold criteria and continuing obligations. Among other threshold criteria, which are not included in full herein, a BFPP must establish that (i) all disposal of hazardous substances at the facility occurred before the purchaser

acquired the facility; (ii) the purchaser performed "all appropriate inquiry" into the previous ownership and uses of the property before acquisition; and (iii) the purchaser is not potentially liable or affiliated with any other person who is potentially liable for response costs at the facility.

In addition to the threshold criteria, a landowner must meet certain continuing obligations in order to qualify as a BFPP. One continuing obligation requires a landowner to provide full cooperation, assistance, and access to persons that are authorized to conduct response actions at the Site. In addition, a BFPP must establish, among other things, that (i) it is in compliance with any land use restrictions established or relied on in connection with the cleanup; and (ii) it does not impede the effectiveness or integrity of any institutional control employed in connection with the cleanup. As provided in EPA's Interim Guidance Regarding Criteria Landowners Must Meet in Order to Qualify for Bona Fide Prospective Purchaser, Continuous Property Owner, or Innocent Landowner Limitations on CERCLA Liability, dated March 6, 2003, landowners must "comply with land use restrictions and implement institutional controls even if the restrictions or institutional controls were not in place at the time the person purchased the property."

Another continuing obligation required to qualify as a BFPP is taking "reasonable steps to stop any continuing release; prevent any threatened future release; and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance." Section 101(40)(D) of CERCLA, 42 U.S.C. Section 9601(40). Based upon the information that EPA has evaluated to date, including the conceptual design provided by NET to EPA on December 18, 2014, EPA believes that, for an owner of the Property, the following would be appropriate reasonable steps with respect to the hazardous substance contamination found at the Property:

- Entering into the Transfer Agreement with Respondents (as referenced above);
- Complying with the applicable land transfer requirements of Paragraph XII of the AOC;
- Providing access to the Property at all reasonable times and cooperating with EPA for the purpose of conducting monitoring and response actions;
- Complying with any existing deed restrictions or institutional controls;
- Agreeing to record and comply with any additional deed restrictions or institutional controls as deemed necessary pursuant to a Record of Decision to implement or maintain response actions;
- Protecting and maintaining all aspects of the existing groundwater recovery and treatment system designated by Respondents as Plant B during and after redevelopment activities, including the permitted surface water discharge to the Upper West Ditch;
- Protecting and maintaining all aspects of the existing slurry wall containment area and temporary cap, and cooperating fully with the anticipated design and installation of a permanent cap on the containment area;
- Cooperating fully with any future response actions to be determined by EPA through anticipated decision documents such as Records of Decision or Action Memoranda;
- Notifying all contractors, subcontractors, lessees and any other parties operating at the Property of this letter, and ensuring that these parties satisfy the requirements set forth in this letter;

- Installing vapor barriers or incorporating other suitable vapor intrusion mitigation measures in future buildings on the Property as deemed necessary by EPA pursuant to anticipated decision documents such as Records of Decision or Action Memoranda;
- Providing EPA and Respondents with copies of any environmental data collected at the Property;
- Providing EPA and Respondents with weekly progress summaries during active re-development construction, including the identification of anticipated areas of intrusive activities, such as excavation, on the Property;
- Cooperating with EPA's field oversight activities during future response actions; and
- Refraining from using the Property in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of any past or future response actions performed at the Site.

This letter does not provide a release of CERCLA liability, but only provides information with respect to reasonable steps based on the information that EPA currently has available to it. The reasonable steps suggested by EPA in this letter are based on the nature and extent of contamination known to EPA at this time, and are provided solely for informational purposes. Site investigations are ongoing and final response actions have not yet been determined by EPA. If additional information regarding the nature and extent of hazardous substance contamination at the Site and/or Property becomes available, additional actions may be necessary to satisfy the reasonable steps criterion. You should ensure that you are aware of the condition of the Property so that you are able to take reasonable steps with respect to any hazardous substance contamination. In particular, if new areas of contamination are identified, you should ensure that reasonable steps are undertaken.

Please note that the BFPP provision has a number of conditions in addition to those requiring the property owner to take reasonable steps. Taking reasonable steps, and certain other BFPP conditions, are continuing obligations of a BFPP. You will need to assess whether you satisfy each of the statutory conditions for the BFPP status and will need to ensure that you continue to meet the applicable conditions.

Nature of this Comfort/Status and Reasonable Steps Letter

EPA generally issues comfort/status and reasonable steps letters to facilitate the cleanup and reuse of contaminated or formerly contaminated properties where there is no other mechanism available to adequately address a party's concern. This comfort/status and reasonable steps letter is intended to help NET and interested stakeholders make informed decisions by providing information that the EPA has about the Site and by identifying statutory protections, enforcement discretion guidance, resources and tools that may potentially be applicable.

It is important to note that EPA has not yet completed the investigation phase of CERCLA for the Site, issued a proposed cleanup plan for public comment, or selected a remedy for any portion of the Site. Accordingly, EPA's final remedy could affect the reasonable steps described above and the future use of the Site. However, as explained further below, based upon the conceptual design provided by NET to EPA on December 18, 2014 (See Attachment 1) and facts currently known to EPA, it does not appear that NET's proposed development will significantly

impact potential future investigatory or response activities at the Property. If NET's proposed conceptual design for the Property changes, the conclusions in this letter could also change.

Based on the conclusions of the baseline human health and ecological risk assessment, which are documented in the Draft Final RI Report for OU1 and OU2, there appear to be no existing or potential future unacceptable human health risks associated with residual contamination for OU1, which includes the Property, assuming that deed restrictions or other institutional controls as required by EPA are placed on the Property to limit development to commercial or industrial use. There also appear to be no unacceptable ecological risks from residual contamination in soil for OU1; however, (i) response actions may be required in the South Ditch to address acute toxicity measured in sediment and to mitigate the effects of the on-going discharge of contaminants in groundwater to surface water in the upper reach, and (ii) there are unacceptable risks which may require response actions associated with OU2 in an area located just east of the Property.

Based on the December 18, 2014 conceptual design provided by NET, the areas where OU1 and OU2 response actions may be required appear to be located outside of NET's proposed development. Additionally, it does not appear that NET's proposed development and use of the Property will interfere with potential response actions for OU1 or OU2. It is important to note that soil within the 5-acre containment area was not included in the remedial investigation process based on the assumption that a permanent cap will be installed. Therefore, the containment area will not be available for reuse until such time that an EPA-approved permanent cap is installed. Any future use of the containment area must be compatible with any permanent cap or other remedy required for the containment area.

OU3 field work is largely complete; however, a remedial investigation and baseline risk assessment are still pending. OU3 is relevant because OU3 includes groundwater beneath the Property, including areas of DAPL. Portions of groundwater or DAPL beneath the Property may require response actions. As such, it is premature for EPA to determine the need, scope or specific location of any response actions for OU3 on the Property, other than the presumption based on OU3 data generated to date that a potential vapor intrusion pathway exists and that vapor barriers or other mitigation methods should be incorporated into new building construction in most areas on the Property.

Based on EPA's understanding of NET's proposed development and use of the Property, as shown in NET's December 18, 2014 conceptual design, and subject to the other caveats described above in this letter, it appears that NET's proposed development is compatible with the conclusions of the OU1 and OU2 baseline risk assessment and anticipated institutional controls, and will not impede the completion of the OU3 investigation or potential response actions relating to groundwater at the Site.

This letter does not limit or affect EPA's authority under CERCLA, or any other law, or provide a release from CERCLA liability. EPA encourages you to consult with legal counsel and the appropriate state, tribal or local environmental protection agency before taking any action to acquire, clean up, or redevelop potentially contaminated property. It is your responsibility to ensure that the proposed redevelopment and use of the Property complies with any federal, state,

local, and/or tribal laws or requirements that may apply. EPA also recommends that you consult with your own environmental professional to obtain advice on the compatibility of the proposed reuse.

We hope this information is useful to you.

If you have any questions, or wish to discuss this letter, please feel free to call Jim DiLorenzo, Remedial Project Manager, at dilorenzo.jim@epa.gov or (617) 918-1247, or Kevin Pechulis, Senior Enforcement Counsel, at pechulis.kevin@epa.gov or (617) 918-1612.

Sincerely,



Nancy Barnakian, Acting Director
Office of Site Remediation and Restoration

Enclosure

cc: Bob Cianciarulo, EPA
Kevin Pechulis, EPA
Jim DiLorenzo, EPA
Joe Coyne, MassDEP
James Cashwell, Olin
Jeff Hull, Town of Wilmington
Martha Stevenson, WERC

ATTACHMENT 1

